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Message Text

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---------- 052912
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TO AMEMBASSY BONN
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E.O. 11652: N/A
TAGS: ICRC, PARM, GW
SUBJECT: FRG QUESTION ON PROTOCOL TO 1949 GENEVA
- - - CONVENTIONS

1. FRG REP ANDREAE AT APRIL 8-9 NATO DISARMAMENT EXPERTS MEETING PUBLICLY AND PRIVATELY RAISED QUESTION OF POSSIBLE APPLICABILITY TO NUCLEAR WEAPONS OF ARTICLE 46 OF PROTOCOL I TO 1949 GENEVA CONVENTIONS BEING DRAFTED AT GENEVA DIPLOMATIC CONFERENCE ON INTERNATIONAL HUMANITARIAN LAW. U.S. DEL VOTED FOR TEXT OF ARTICLE 46 WHEN IT WAS ADOPTED BY COMMITTEE III (CDDH/III/272) ON UNDERSTANDING THAT IT WOULD NOT REPEAT NOT BE APPLICABLE TO NUCLEAR WARFARE.
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IF DRAFT PROTOCOL WERE APPLICABLE TO NUCLEAR WARFARE, OTHER

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PROVISIONS OF PROTOCOL WOULD POSE SIMILAR PROBLEMS. HOWE-
VER, THE PROTOCOL IS INTENDED TO DEAL ONLY WITH CONVENTION-
AL WARFARE. THIS IS REFLECTED IN INTRODUCTION TO ICRC
BASIC TEXTS, WHERE IT IS NOTED THAT ICRC DID NOT INTEND TO
BROACH PROBLEMS OF ATOMIC WARFARE.

2. IN ADDITION, ON APRIL 14, 1975, IN COMMITTEE III OF
CONFERENCE, US REP SAID FOR THE RECORD: QUOTE MY DELEGA-
TION, IN REVIEWING THE WORK OF THIS SESSION, IS ENCOURAGED
BY THE PROGRESS ACHIEVED IN COMMITTEE III. ALTHOUGH MUCH
WORK AND SOME IMPORTANT PROBLEMS AWAIT US NEXT YEAR, WE
BELIEVE THAT THE WORK OF THIS COMMITTEE THUS FAR
REPRESENTS SIGNIFICANT PROGRESS TOWARD THE DEVELOPMENT
OF HUMANITARIAN LAW IN ARMED CONFLICTS, WHICH WILL BRING
WITH IT CONSEQUENTIAL IMPORVEMENTS IN THE PROTECTION
AFFORDED COMBATANTS AND CIVILIANS ALIKE. IN CONNECTION
WITH THE ARTICLES ADOPTED BY THE COMMITTEE THIS YEAR WE
WISH TO NOTE FOR THE RECORD THE RELEVANCE OF THE STATEMENT
CONTAINED IN THE ICRC INTRODUCTION TO THE DRAFT PROTOCOLS
TO THE EFFECT THAT BY THEIR SUBMISSION, THE INTERNATIONAL
COMMITTEE OF THE RED CROSS DID NOT INTEND TO BROACH
PROBLEMS QTE RELATING TO ATOMIC, BACTERIOLOGICAL, AND
CHEMICAL WARFARE. UNQUOTE. WE TOO RECOGNIZE THAT SUCH
PROBLEMS, WHICH CALL FOR URGENT ACTION IN OTHER FORUMS, ARE
BEYOND THE SCOPE OF THIS CONFERENCE. AN ACCEPTABLE RULE
OF LAW DESIGNED TO BE APPLICABLE TO THE USE OF WEAPONS
OF MASS DESTRUCTION WOULD, ALMOST CERTAINLY, PROVIDE
LITTLE OR NO PROTECTION IN CONVENTIONAL WAR. CONVERSELY,
RULES, SUCH AS THE ONES ON WHICH WE ARE WORKING IN THIS
CONFERENCE, ARE DESIGNED FOR CONVENTIONAL WARFARE AND
WOULD NOT FIT WELL IN THE CONTEXT OF THE USE OF
WEAPONS OF MASS DESTRUCTION. THIS UNAVOIDABLE LIMITATION
ON THE SCOPE OF OUR WORK SHOULD NOT, HOWEVER, BE UNDER-
STOOD AS DEROGATING IN ANY WAY FROM THE CRITICAL, HUMANI-
TARIAN CONTRIBUTION WHICH WILL BE MADE BY THE WORK OF THIS
CONFERENCE. END QUOTE.

3. EMBASSY IS REQUESTED TO ASSURE ANDREAE THAT ARTICLE
46 DEALS WITH THE PROBLEM OF INDISCRIMINATE ATTACKS AGAINST
CIVILIANS BY CONVENTIONAL MEANS AND IN OUR VIEW DOES NOT
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COVER NUCLEAR WEAPONS. EMBASSY MAY WISH TO MENTION THAT
MEMBERS OF USDEL TO GENEVA DIPLOMATIC CONFERENCE DISCUSSED
THIS SUBJECT SEVERAL TIMES WITH DR. OTTO FRANKE OF FRG DEL.
KISSINGER

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